

HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court’s order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

Con. Pe. No. 334 of 2004

Smt. Sunita Singh

Vs

Mr. Sundar Lal Moyal

Approved for reporting.

~~Not approved for reporting~~

Date of decision 13.7.2005

Initial of Judge

RESERVED

IN THE HIGH COURT OF UTTARANCHAL AT
NAINITAL

CONTEMPT PETITION NO. 334 OF 2004

1. Smt. Sunita Singh, W/o Sri Tribhuwan Singh,
2. Arjun Chaudhary, S/o Sri Ajay Chaudhary, R/o Village Bandia, Pargana Rudrapur, Tehsil Kichha, District Udham Singh Nagar Applicants/Petitioners.

Versus

1. Mr. Sundar Lal Moyal, D.M./Deputy Director Consolidation, District Udham Singh Nagar.
2. Sanjay Kumar Arya, Consolidation Officer, Kichchha, District Udham Singh Nagar,
3. S.C. Gupta, Settlement Officer Consolidation, Kichchha, District Udham Singh Nagar.
4. Dheer Singh,
S/o Sri Kabool Singh,
5. Mr. Nagarkoti,
S/o unknown
Manager of Dheer Singh
6. Pankaj Chaudhary,
S/o Sri Dheer Singh,
7. Smt. Krishna Chaudhary,
W/o Sri Bir Singh,
Respondents no. 4 to 7, R/o Village Bandia,
Pargana Rudrapur, Tehsil Kichchha,
District Udham Singh Nagar Respondents.

Sri Sharad Sharma, learned counsel for the applicants/petitioners.

Learned Standing Counsel for the respondents no. 1 to 3.

Sri N.S. Pundir, learned counsel for the respondents no. 4 to 7.

Dated: July 13 , 2005

Hon'ble Rajesh Tandon, J.

The present contempt application has been filed against the opposite parties for willful contempt of the court's order dated 22.08.2000 passed in Writ Petition No. 37076/2000 'Smt. Sunita Singh and another Vs. Deputy Director of Consolidation and others'

Briefly stated, the petitioner has filed a writ petition No. 380 of 2001 'Smt Sunita Singh and another v. Deputy Director of Consolidation and others before the Allahabad High Court against the order dated 12.12.1998 passed by the Deputy Director of Consolidation, Udham Singh Nagar in Revision No. 52/3 of 1997-98. The Court directed to issue notice fixing 06.11.2000 and further directed that the petitioners shall not be evicted from the Plot No. 212, if he was still in possession.

The applicants have submitted that the order passed by the Court was sent to the respondents by registered post on 22.08.2000, but the respondents refused to receive the registered letter.

The notices were sent by the office of Allahabad High Court and they were served upon the respondents on 15.09.2000 and as such the respondents were fully aware of the order passed by the Court on 22.08.2000. Thereafter the respondents interfered with the possession of the applicants on 24/25.10.2000 and cut the crops standing on the land in dispute. The applicants lodged a First Information Report at Police Station Kichchha, District Udham Singh Nagar on 07.10.2000.

The applicants also filed an application on 16.10.2000 before the District Magistrate, who directed the Superintendent of Police, District Udham Singh Nagar to look into the matter and on investigation the Police found that interference on Plot No. 212 was made by the opposite parties. Petitioners have submitted that the respondents had full knowledge of the order dated 22.08.2000 passed by the Allahabad High Court but they willfully disobeyed the order and thereby made contempt.

The applicants have submitted that the action of the respondents/opposite parties to have taken forcible possession

over Plot No. 212 by cutting the crops on 24/25.10.2000 as well as on 05.10.2000 which is a willful and deliberate defiance and violation of the order passed by the Court on 22.08.2000.

The applicants have prayed that the opposite parties be directed to appear in person before the Hon'ble Court and appropriate punishment may be awarded to them.

In compliance of the order of the Court, the opposite parties filed counter affidavit and denied the allegations made in the contempt petition. Opposite party no. 1 Sri Sundar Lal Moyal, District Magistrate Udham Singh Nagar has stated in his counter affidavit that after the interim order was passed, the then Consolidation Officer, Kichchha Sri Israt Hussain along with the petitioners as well as the respondents prepared survey report along with survey map.

Thereafter, on 01.01.2001 an order was passed in presence of the parties. He denied the allegation of destroying the boundary wall in between the Plots No. 372 and 349. He submitted that after 27.11.2000, no measurement of plot in dispute was done. He has further stated that order dated 22.08.2000 passed by Allahabad High Court Court was never violated. He has submitted that order dated 01.01.2001, which was recorded in the revenue records on 15.03.2001 was never challenged by the petitioner before any competent court of law. The opposite party/deponent has annexed the copies of survey report dated 27.11.2000 and order dated 01.01.2001 along with his affidavit Sri Sanjay Kumar Arya opposite party no. 2 has also submitted his counter affidavit and inter alia narrated the same facts as stated in the affidavit of Sri Sundar Lal Moyal.

Similar affidavit has been filed by Sri S.C. Gupta, Settlement Officer Opposite Party No.3.

Sri Dheer Singh, Opposite Party No. 4 has also filed short counter affidavit and denied that any order of the court has been violated by him.

Learned counsel for the respondents have submitted that the petition has been filed after more than three and half years and thus the petition is barred by limitation as provided under Contempt of Courts Act. Further the learned counsel has submitted that the writ petition was not admitted and therefore notices have been wrongly issued.

I have perused the record of the writ petition no. 380 of 2001. The order passed on 22.08.2000 shows as under:-

“After hearing the learned counsel for the petitioner, I am of the view that respondents be also heard at the time of admission.

Issue notice to the respondents nos. 3 to 7 fixing 06.11.2000.

Meanwhile, petitioners shall not be evicted from the plot no. 212, if they have not already been dispossessed.”

In ***State of J & K v. Mohd. Yaqoob Khan reported in 1992 (4) SCC Page 167.*** The Apex Court has observed as under:-

“4. The matter was pending for some time,. By an order passed on July 26, 1991 in the contempt matter two Commissioners were appointed by the court for submitting a report as indicated in the order. The Commissioners accordingly submitted a report. The contempt proceeding was disposed of by the impugned

order whereby the State has been asked to implement the interim direction issued on March 19, 1991 in the light of the Commissioner's report. Dealing with the objections raised on behalf of the State, the High Court made certain observations against its case, but followed it by declaring that,

“It is no stage to go into the merits of the case which factum is required to be adjudicated upon in the main writ petition but the petitioner is required to be provided 50 percent timber, to be assessed with increments, in light of the abovesaid Government Orders.”

5. We find great force in the argument of Mr Salve that so long the stay matter in the writ petition was not finally disposed of, the further proceeding in the contempt case was itself misconceived and no orders therein should have been passed. Mr. Bhandare appearing on behalf of the writ petition, who is respondent before us, has strenuously contended that the orders passed in the contempt proceedings should be treated to have disposed of the stay matter in the writ petition also. He laid great emphasis on the fact that the counsel for the respondents in the writ petition had been

heard before the orders were issued. He invited our attention to the merits of the claim. It is argued that the order dated March 19, 1990 must, in the circumstances, be treated to have become final and, therefore, binding on the State of the High Court was right in issuing the further direction by way of implementation of earlier order.

6. We do not agree. The scope of a contempt proceeding is very different from that of the pending main case yet to be heard and disposed of (in future). Besides, the respondents in a pending case are at a disadvantage if they are called upon to meet the merits of the claim in a contempt proceeding at the risk of being punished. It is, therefore, not right to suggest that it should be assumed that the initial order of stay got confirmed by the subsequent orders passed in the contempt matters.

7. We, therefore, hold that the High Court should have first taken up the stay matter without any threat to the respondents in the writ case of being punished for contempt. Only after disposing it of, the other case should have been taken up. It is further significant to note that the respondents before the High Court were

raising a serious objection disputing the claim of the writ petitioner. The High Court should first take up the stay matter in the writ case, and dispose of it by an appropriate order. Only thereafter it shall proceed to consider whether the State and its authorities could be accused of being guilty of having committed contempt of court.

In view of the observations made by the apex court in the case of ***State of J & K Vs. Mohd. Yaqoob (supra)*** the contempt petition is not maintainable against the respondents as the writ has not yet been admitted and the stay matter has yet to come up for constitution.

Further according to the applicants, the alleged violation of the court's order was made by the opposite parties on 24/25.10.2000. The application was filed on 20th December, 2004. Section 20 of the Contempt of Courts Act, 1971 provides as under:-

“20. Limitation for actions for contempt. –No court shall initiate any proceedings of contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed.”

In ***Bardakanta Mishra Vs. Mr. Justice Gatikrushna Misra, C.J. of the Orissa H.C. 1974 AIRSC Page 2255***, the Apex Court has interpreted Section 20 of the Contempt of Courts Act, 1971 by saying that no court shall initiate any proceeding for contempt either on its own motion

or otherwise after the expiry of a period of one year from the date on which the contempt is alleged to have been committed. Relevant observations are quoted below:-

“.....Section 20 prescribes a period of limitation by saying that no court shall initiate any proceeding for contempt either on its own motion or otherwise after the expiry of a period of one year from the date on which the contempt is alleged to have been committed. It is only when the court decides to take action and initiates a proceeding for contempt that it assumes jurisdiction to punish for contempt. The exercise of the jurisdiction to punish for contempt commences with the initiation of a proceeding for contempt, whether suo motu or on a motion or a reference. That is why the terminous a quo for the period of limitation provided in Section 20 is the date when a proceeding for contempt is initiated by the Court.”

In the present case the application for initiating the contempt proceedings was moved on 21.12.2004 i.e. after a lapse of more than three and half years and further the Writ Petition has yet to come for admission and disposal of stay matter, Consequently, the Contempt Application is liable to be dismissed.

Accordingly, the contempt petition is dismissed.

(Rajesh Tandon, J.)

Dated: July 13, 2005
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